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December 19, 1997

By Hand Delivery

Ms. Magalie Roman Salas  
Secretary  
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1919 M Street, N.W.  
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Washington, D.C. 20554

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DEC 19 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Reply Comments of  
the Telecommunications Resellers Association  
to BellSouth's Application for "In-Region", InterLATA  
Authority in the State of Louisiana  
CC Docket No. 97-231

Dear Ms. Salas:

Pursuant to the Public Notice, DA 97-2330, (released November 6, 1997), transmitted herewith, on behalf of the Telecommunications Resellers Association ("TRA"), are an original and eleven (11) copies of TRA's Reply Comments, and a 3½" diskette containing TRA's Opposition in WordPerfect for Windows 5.1 format.

If you should have any questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

*Marie E. Kelley*

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Legal Assistant

Enclosures

*At 11*

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

DEC 19 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In The Matter of**

**APPLICATION OF BELLSOUTH  
CORPORATION, BELLSOUTH  
TELECOMMUNICATIONS, INC. AND  
BELLSOUTH LONG DISTANCE, INC.  
FOR PROVISION OF IN-REGION,  
INTERLATA SERVICES IN LOUISIANA**

**CC Docket No. 97-231**

**REPLY COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Public Notice, DA 97-2330 (released November 6, 1997), hereby replies to the comments of Ameritech Corporation ("Ameritech") filed in support of the application ("Application") of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively "BellSouth") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),<sup>1</sup> as amended by Section 151 of the Telecommunications Act of 1996 ("Telecommunications Act" or "1996 Act")<sup>2</sup> for authority to provide interLATA service "originating" within the BellSouth "in-region State" of Louisiana.

<sup>1</sup> 47 U.S.C. § 271(d).

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

## I.

### ARGUMENT

Ameritech limits the scope of its comments to the issue of "whether interconnection agreements with providers of Personal Communications Services ("PCS") may be used to satisfy Section 271(c)(1)(A)."<sup>3</sup> Ameritech argues that "both the law as it stood before the 1996 Act and the structure and language of the 1996 Act itself demonstrate that PCS carriers provide 'telephone exchange service' as defined in Section 3(47)(A) and therefore can be Track A carriers."<sup>4</sup> TRA submits that in so arguing, Ameritech has defined the issue far too narrowly and as a result has reached, and urges the Commission to reach, an erroneous conclusion.

TRA submits that the issue that must be resolved in assessing BellSouth's compliance with the requirements of "Track A" is whether PCS licensees constitute not only competing providers of telephone exchange service, but competing providers whose presence demonstrates that BellSouth has in fact "open[ed] local telecommunications markets to previously precluded competitors."<sup>5</sup> It is well settled that statutes are to be construed "in light of the statutory purpose."<sup>6</sup> Indeed, even the mechanical "plain meaning" doctrine is subservient to a truly discernible legislative

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<sup>3</sup> Comments of Ameritech on Application by BellSouth to Provide In-Region, InterLATA Services in Louisiana at 1 ("Ameritech Comments").

<sup>4</sup> Id. at 2.

<sup>5</sup> Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC 97-298, ¶ 13 (Aug. 19, 1997).

<sup>6</sup> See, e.g., U.S. v. Article of Drug . . . Bacto-Unidisk, 394 U.S. 784, 799 (1969).

purpose.<sup>7</sup> Policy is the ultimate controlling factor in statutory construction, and thus, statutory language should be given a meaning, if words will bear it, which carries out the purpose of the statute, even if it is not the literal meaning of the words.<sup>8</sup>

As succinctly stated by the Commission, Congress in "enact[ing] the sweeping reforms contained in the 1996 Act, . . . sought to open local telecommunications markets to previously precluded competitors not only by removing legislative and regulatory impediments to competition, but also by reducing inherent economic and operational advantages possessed by incumbents."<sup>9</sup> The presence of a facilities-based competitive provider of local exchange service was to be a "tangible affirmation that the local exchange is indeed open to competition."<sup>10</sup> The presence of a PCS provider, or any other non-cellular wireless service provider -- e.g., providers of traditional mobile telephone service, certain 800 MHZ and 900 MHZ specialized mobile radio service ("ESMR"), and perhaps even such narrowband services as 220 MHZ and business radio services -- affirms nothing with respect to the removal of barriers to entry into the local market. Indeed, all of these services were available to consumers well before passage of the Telecommunications Act.

Thus, the question is not whether PCS licensees provide telephone exchange service.

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<sup>7</sup> See, e.g., Aviation Consumer Action Project v. Washburn, 535 F.2d 101 (D.C. Cir. 1976); Organized Migrants in Community Action, Inc. v. Brennan, 520 F.2d 1161, 1166 (D.C. Cir. 1975) ("[T]he plain meaning of a statute cannot override an obviously contrary legislative purpose.").

<sup>8</sup> See, e.g., District of Columbia v. Orleans, 406 F.2d 957 (D.C. Cir. 1968); United States v. State of Maryland for Use of Meyer, 349 F.2d 963 (D.C. Cir. 1965).

<sup>9</sup> Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC 97-298 at ¶ 13 (emphasis added).

<sup>10</sup> H.R. Rep. No. 204, 104th Cong., 1st Sess., pt. 1, at 76 - 77 ("House Report").

Nor is the issue solely whether PCS licensees provide a meaningful alternative to wireline local service, although this is an important preliminary consideration. The matter that must ultimately be resolved is whether the presence of PCS providers in a local market is meaningful in the context of Section 271 and the purpose for which that provision was incorporated into the Telecommunications Act. In other words, the fundamental inquiry must be whether the availability of PCS confirms that the will of Congress that all barriers to competitive entry into BellSouth's local markets in the State of Louisiana be eliminated has been realized.

The obvious answer to both the preliminary and ultimate questions is "no." Certainly, PCS is not a meaning service alternative to wireline local exchange service, TRA and a host of other commenters identified any number of differences between PCS and wireline local exchange service that render the former "largely complement[ary] to" the latter.<sup>11</sup>

- In virtually all instances, PCS remains significantly more expensive than wireline local exchange service.<sup>12</sup>
- Unlike wireline local exchange service, users of PCS pay for incoming, as well as outgoing, calls.<sup>13</sup>

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<sup>11</sup> Application of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, File No. NSD-L-96-10, FCC 97-286, ¶ 90 (Aug. 14, 1997).

<sup>12</sup> "Wireless telephone service prices will have to fall well over 50 percent for wireless service to be fully price-competitive with traditional telephone service." Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, 12 FCC Rcd. 11266, 11323, 11324 (1997).

<sup>13</sup> "A fundamental difference between wireline and wireless service is that currently a U.S. wireline telephone subscriber does not pay any additional charges to receive telephone calls, whereas most CMRS telephone subscribers pay a per minute charge to receive calls." Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, FCC 97-341, ¶ 2 (Oct. 23, 1997)

- Unlike wireline local exchange service, users of PCS pay for a portion of every "800" and "888" call.
- Unlike wireline local exchange service, PCS does not provide residential users with the ability to make unlimited calls for a fixed monthly charge.
- Unlike wireline local exchange service, PCS requires that each handset must have a separate calling plan.
- PCS handsets are generally significantly more expensive than telephones used for residential service.
- The predominant trait of PCS -- *i.e.*, its mobility -- renders it less useful as a substitute for local exchange service because the removal of the PCS handset from a residence would deny the household phone service, including the ability to call police and other emergency services.

Because of these differences, PCS remains at best a potential competitor to wireline local exchange service.<sup>14</sup> As the Commission has recognized, "wireless local loops have [not yet] begun to replace wireline local loops for the provision of local exchange service."<sup>15</sup> More importantly, PCS, even if it were a meaningful competitive alternative to wireline local exchange service, would not constitute facilities-based competition for purposes of Section 271(c)(1)(A) because the presence of a PCS provider in a local market says nothing with regard to the incumbent LEC's compliance with the Congressional directive to open its market to competition. The PSC provider would be in the market even if the incumbent LEC had ignored altogether the mandates of

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<sup>14</sup> Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, FCC 97-352, ¶ 54 (Oct. 3, 1997).

<sup>15</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 1005 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, FCC 97-295 (Oct. 2, 1997), *aff'd in part, vacated in part sub. nom. Iowa Utilities Board v. FCC*, Case No. 96-3321, 1997 WL 403401 (8th Cir. July 18, 1997) ("Iowa Utilities Board"), *rehearing* (Oct. 14, 1997), *pet. for rev. pending sub. nom., Southwestern Bell Telephone Co. v. FCC*, Case No. 97-3389 (Sept. 5, 1997).

Sections 251 or 252,<sup>16</sup> and a PCS provider's success or failure following market entry would not be impacted by such matters as the commercial viability of the incumbent local exchange carriers ("LEC") operations support systems, the availability of competitively neutral number portability, the pricing of unbundled network elements or wholesale services, or other like matters of critical importance to competitive LECs.

There is a reason that Congress limited its reference to telephone exchange service in Section 271 to Section 3(47)(a), rather than Sections 3(47)(a) and (b), and the predicate for this action was reaffirmed by Congress' exclusion of the then principal wireless service offering. Section 3(47)(b) makes reference to "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."<sup>17</sup> As Ameritech acknowledges, the Commission found that "cellular, broadband PCS, and covered SMR providers fall within the second part of the definition because they provide 'comparable service' to telephone exchange service,"<sup>18</sup> but did not further hold that these wireless services fell within Section 3(47)(a).<sup>19</sup> In other words, PCS provides connectivity at a local level, but does not provide a meaningful competitive alternative to wireline local service.<sup>20</sup> Congress' express exclusion of cellular service evidences a recognition that

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<sup>16</sup> 47 U.S.C. §§ 251, 252.

<sup>17</sup> 47 U.S.C. § 153(47)(b).

<sup>18</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 1013.

<sup>19</sup> Ameritech Comments at 8, fn. 14.

<sup>20</sup> It is noteworthy in this respect that the House of Representatives excluded cellular service because the Commission had not found it to be a substitute for wireline local exchange service. House Report at 77.

the presence of a wireless service provider demonstrates nothing with respect to an incumbent LEC's efforts, or lack thereof, in opening its market to competition. While Ameritech reads the exclusion of cellular service to require the inclusion of PCS providers in the universe of providers of telephone exchange service, it is equally reasonable to interpret this exclusion to reflect Congressional belief that cellular service was the only wireless service that was both mature enough and sufficiently ubiquitous to even arguably be encompassed by the Section 3(47)(A) definition. After all, a mere six months prior to enactment of the Telecommunications Act, the Commission capsulized the status of PCS deployment as follows:

The Commission also expects that broadband PCS generally will inject major new competition into the mobile telecommunications services market by creating at least three new major competitors to cellular and other current CMRS providers in each area. . . The Commission recently licensed Blocks A and B for forty-seven large territories (MTAs), and the other four blocks each will be licensed for 493 territories called Basic Trading Areas (BTAs).<sup>21</sup>

In short, while the argument that PCS providers constitute competing providers of telephone exchange service for purposes of "Track A" compliance is clever, it does serve violence to the intent of Congress reflected in Section 151 of the Telecommunication Act. As TRA noted in its comments, PCS could someday extend, replace, and compete with wireline local exchange service,"<sup>22</sup> but that day has not yet arrived. If and when it does, however, it will reveal nothing with respect to an incumbent LEC's compliance with Congressional directives to open its local exchange/exchange access markets to competition.

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<sup>21</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, 10 FCC Rcd. 8844, ¶¶ 45 - 46 (1995).

<sup>22</sup> Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, FCC 97-352, ¶ 6.



**II.**

**CONCLUSION**

By reason of the foregoing and its earlier-filed Opposition and Ameritech's arguments to contrary notwithstanding, the Telecommunications Resellers Association once again urges the Commission to deny the Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. under Section 271(d) of the Communications Act, as amended by Section 151 of the Telecommunications Act to provide interLATA service within the "in-region State" of Louisiana.

Respectfully submitted,

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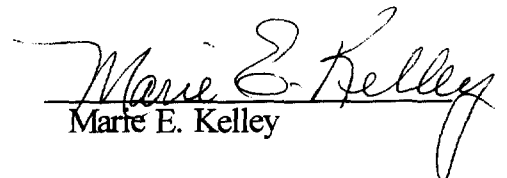
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December 19, 1997

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